

**LEMON GROVE CITY COUNCIL
AGENDA ITEM SUMMARY**

Item No. 1.G
Mtg. Date July, 19 2016
Dept. City Manager

Item Title: **Lease Agreement Between the City of Lemon Grove and the County of San Diego**

Staff Contact: Lydia Romero, City Manager

Recommendation:

That the City Council adopt the resolution approving the Lease Agreement between the City of Lemon Grove and the County of San Diego for the Lemon Grove Sheriff's Substation 3240 Main Street. |

Item Summary:

Since the Rancho San Diego Sheriff's Facility opened, the City of Lemon Grove and the County of San Diego have been without a lease for the Lemon Grove Sheriff's substation, located at 3240 Main Street. The proposed lease agreement term highlights include: 60 month term, County will be responsible for janitorial services, routine interior maintenance and all utilities except water and trash. City will be responsible for exterior maintenance and major building repairs (plumbing, electrical, structural.) The County will not pay rent in exchange for taking on the responsibility of all the interior and minor premises improvements.

Staff recommends approval of the lease agreement. |

Fiscal Impact:

None |

Environmental Review:

- | | |
|---|---|
| <input checked="" type="checkbox"/> Not subject to review | <input type="checkbox"/> Negative Declaration |
| <input type="checkbox"/> Categorical Exemption, Section [] | <input type="checkbox"/> Mitigated Negative Declaration |

Public Information:

- | | | |
|--|---|---|
| <input checked="" type="checkbox"/> None | <input type="checkbox"/> Newsletter article | <input type="checkbox"/> Notice to property owners within 300 ft. |
| <input type="checkbox"/> Notice published in local newspaper | <input type="checkbox"/> Neighborhood meeting | |

Attachments:

- A. Resolution
- B. Draft Lease Agreement

Attachment A

RESOLUTION NO. 2016 -

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LEMON GROVE, CALIFORNIA APPROVING THE LEASE AGREEMENT BETWEEN THE CITY OF LEMON GROVE AND THE COUNTY OF SAN DIEGO FOR 3240 MAIN STREET TO SERVE AS THE LEMON GROVE SHERIFF'S SUBSTATION

WHEREAS, in January 1983, the City Council of the City of Lemon Grove approved Resolution No. 597, authorizing the lease agreement with the County of San Diego for the Lemon Grove Sheriff's Substation located at 3240 Main Street; and

WHEREAS, in June 1986, the City Council of the City of Lemon Grove approved Resolution No. 877 amending the lease agreement with the County of San Diego for the Lemon Grove Sheriff's Substation located at 3240 Main Street; and

WHEREAS, the City Council finds it in the public interest to enter into a new lease agreement with the County of San Diego for the Lemon Grove Sheriff's Substation located at 3240 Main Street; and

WHEREAS, the attached lease agreement supersedes any previous agreement with County of San Diego for 3240 Main Street; and

WHEREAS, the City Council authorizes the City Manager to sign attached lease agreement.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Lemon Grove, California hereby approves the Lease Agreement between the City of Lemon Grove and the County of San Diego for 3240 Main Street to serve as the Lemon Grove Sheriff's Substation.

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LEASE AGREEMENT

SAN DIEGO COUNTY SHERIFF'S DEPARTMENT
LEMON GROVE SUBSTATION
3240 MAIN STREET
LEMON GROVE, CALIFORNIA 91945

TENANT: COUNTY OF SAN DIEGO, a political subdivision
of the State of California

LESSOR: CITY OF LEMON GROVE, a municipal corporation

ASSESSOR'S PARCEL NUMBER: 480-174-01 (Portion)

COUNTY CONTRACT NO.: _____

LEASE AGREEMENT
SAN DIEGO COUNTY SHERIFF'S DEPARTMENT
LEMON GROVE SUBSTATION

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A - DESCRIPTION OF PREMISES AND PARKING AREA

LEASE AGREEMENT

SAN DIEGO COUNTY SHERIFF'S DEPARTMENT - LEMON GROVE SUBSTATION

THIS LEASE AGREEMENT ("Lease") is made and entered into effective as of _____ ("Effective Date"), by and between the City of Lemon Grove, a municipal corporation ("City"), and the COUNTY OF SAN DIEGO, a political subdivision of the State of California ("County"), collectively parties ("Parties").

ARTICLE 1 **PREMISES**

Effective as of the "Effective Date" first set forth above, which is defined as the date this Lease shall be approved by the Director of the County's Department of General Services, County hereby leases the premises ("Premises") described as the Lemon Grove Sheriff's Station located at 3240 Main Street, Lemon Grove, California, 91945 (the "Building"). The Premises consists of approximately 10,700 square feet of office space on the 1st and 2nd floors of the Building and includes 40 reserved parking spaces and 15 unreserved parking spaces in the parking lot, and is further identified as a portion of Assessor's Parcel Number (APN) 480-174-01 (the "Premises"), shown on Attachment A hereto. City hereby leases the Premises to County, on and subject to the terms, covenants and conditions set forth herein.

ARTICLE 2 **TERM**

2.1 Term. The term ("Term") of this Lease is 60 months, commencing on the Effective Date above. County may use the Premises twenty-four (24) hours a day, seven days per week, including weekends and holidays.

2.2 County's Early Termination Rights. This Lease may be terminated by County, at its sole option and without penalty, to be effective at any time following expiration or termination of the Service Agreement for General and Specified Law Enforcement and Traffic Services ("Agreement") between the County and the City. The current Agreement is scheduled to expire on June 30, 2017 and may be renewed by the Parties. Notwithstanding any other section or provisions of this Lease, either party may terminate this Lease by giving a 180 days advance written notice of intention to terminate.

2.3 Holding Over. The Term of this Lease shall expire without further notice at the expiration of the Term specified in Section 2.1. If County holds over in occupancy of the Premises, or any portion of the Premises, after the expiration of the Term without City's written consent, County shall become a tenant on a month-to-month basis as proportionately reduced to the extent that County has vacated any portion of the Premises. Any such holdover shall be subject to the terms and conditions specified in this Lease, so far as applicable. Any holding over after the expiration of the Term shall not constitute a renewal or extension of this Lease, except as specified in this Lease, or when in writing signed by both parties to this

Lease. During any holdover after the expiration of the Term, the County shall continue to indemnify City in accordance with Article 9, INDEMNITY. The inclusion of this reference does not affect any provisions in the balance of this Lease. City agrees to consent to any written holdover request of County for any lawful reasonable purpose for a period not to exceed one (1) year.

ARTICLE 3 **CONSIDERATION**

The County shall pay no rent during the Term or any extension thereof. Consideration for this Lease shall be the County's certain interior routine maintenance of and installation of minor improvements in the Premises.

ARTICLE 4 **USE OF PREMISES**

The Premises shall be used for the sole purpose of operating the San Diego County Sheriff's - Lemon Grove Substation ("Substation"), ("County's Intended Use"); provided, however, that County reserves the right to use the Premises for any other comparable use permitted by applicable zoning laws or ordinances, subject to City's reasonable prior written approval thereof. In operating the Substation, County may access and use the Premises, the Building, the parking lots appurtenant to the Building, and also includes the land on which the Building and the other facilities are located, subject to the terms and conditions of this Lease.

ARTICLE 5 **QUIET ENJOYMENT**

Upon County's performing its other obligations hereunder, County shall peacefully and quietly have, hold and enjoy the Premises throughout the Term and any extensions thereof, without hindrance, ejection or molestation by City, any person lawfully claiming through or under City or any person claiming prior rights to City to the Premises.

ARTICLE 6 **MAINTENANCE AND REPAIR OBLIGATIONS**

6.1 Maintenance and Custodial Services. County shall, at its sole expense, furnish to the Premises all routine interior maintenance and custodial services which may be required for the County's occupancy and use of the Premises. This routine maintenance includes but is not limited to replacing flooring and painting, and other minor maintenance activities that do not exceed \$5,000.00 per incident. City shall, at its sole expense maintain all major building systems, including plumbing, electrical, life safety and structural systems and furnish to the Premises all exterior maintenance, including roof, doors and exterior building surfaces, HVAC system maintenance, landscape service, parking lot maintenance and trash removal services. Such services shall be provided at the level necessary to maintain the Premises and the Building in a clean, orderly, and serviceable condition. City's maintenance obligations under this section include, without limitation, providing those services specified in California Civil Code Section

1941.1 or any successor statute thereto. All such services shall be provided at such reasonable times and in such a manner as to minimize interference with County's use and enjoyment of the Premises. All individuals or companies providing custodial and trash removal services hereunder shall be bonded.

6.2 Additional Services Requested by County. If County shall request any services in addition to those specified or reasonably anticipated hereunder, City shall use its best efforts to supply the same, and such additional services shall be charged at reasonable rates established by City and approved in writing by County's Lease Administrator prior to provision of the service. The agreed cost of such additional services shall be reimbursed to City by County within thirty (30) days of County's receipt of City's invoice therefor, together with evidence of City's payment thereof.

6.3 Repairs.

(a) Subject to the provisions of this Lease pertaining to damage or destruction of the Premises, City shall, at all times and at its sole expense keep the exterior of the Premises' Building and parking lot in good order, condition and repair, such that the same are at all times in good and tenantable condition.

(b) County shall make, at its sole expense, all repairs to the interior of the Premises required by reason of the fault or negligence of County, its officers, employees or persons using the Premises to conduct business with County. County shall further provide, at its sole expense, replacement of broken exterior windows and all maintenance and repairs to the interior of the Premises not to exceed \$5,000.00 per incident. County shall paint, and repair and replace carpet as needed throughout the Term.

(c) Lessor shall, at Lessor's sole expense provide all building maintenance and structural repairs including but not limited to exterior painting, roofing, all maintenance and repair of heating and cooling systems, plumbing, electrical equipment and landscape maintenance. Where work is necessary to cure an emergency situation, Lessor shall perform such work immediately upon Lessor's discovery thereof and may then seek reimbursement from County for that work that deemed to be due to the fault or negligence of County, its officers, employees or persons using the premises to conduct business with the County without having obtained County's Lease Administrator's prior written approval of such work. For work of a non-emergent nature, City shall obtain County's prior written approval for work performed by City for which City intends to seek reimbursement from County.

6.4 Repair and Maintenance Safety Requirements.

(a) Whenever feasible, City shall schedule repair and maintenance work at times other than normal working hours. Repair or maintenance work which involves the use of

processes which generate airborne contaminants, which can negatively impact indoor air quality, may be conducted during normal working hours only with County's prior written consent.

(b) When repair or maintenance work must be performed during normal working hours, mechanical ventilation units serving the Premises in the vicinity of the work shall be shut down for the duration of such work, and until any contaminants generated thereby have had a chance to dissipate. During such period, City shall take steps to provide alternative sources of fresh air to the Premises.

(c) City shall give County five (5) days prior written notification of any non-regularly scheduled maintenance, and of any and all repair work, to be performed on the Premises.

(d) City, and anyone performing work on behalf of the City on the Premises, shall maintain a Safety Data Sheet containing all pertinent information regarding hazardous materials which may be utilized in connection with such work.

6.5 City's Failure to Provide Services and Repairs. Should City fail to perform any act or provide any service required hereunder and not cure such failure, or commence and continue to diligently pursue to completion such curing, within five (5) days following written notice thereof by County (or immediately if the nature of the problem presents a hazard or emergency), County shall have the right, but not the obligation, to remedy such situation by making the relevant repairs or obtaining the relevant service. County's cost in so doing shall be reimbursed to County by City within thirty (30) days of delivery of the invoices evidencing such work.

6.6 Certified Access Specialist Inspection. Pursuant to the provisions of California Civil Code section 1938, the Premises has not undergone inspection by a Certified Access Specialist to determine whether the Premises meets all applicable construction-related accessibility standards pursuant to California Civil Code section 55.53.

ARTICLE 7

UTILITIES

City shall furnish all utilities to the Premises and shall pay for all water and trash services at the Premises. County shall pay for all utilities, except for water and trash services, necessary for the use and enjoyment by County of the Premises for County's Intended Use. County-provided utility services shall include, but not necessarily be limited to gas, electricity, heating, ventilation and air conditioning service if required for County's Intended Use of the Premises. City shall not be obligated to provide telephone, cable and data equipment or facilities to the Premises, but City waives any right to approve the installation of such equipment or facilities by the County that are reasonably necessary for the County's Intended Use.

ARTICLE 8

INSURANCE

8.1 City's Insurance Obligations. City maintains a policy of All-Risk Insurance covering the City's personal property in the Premises, including any fixtures or equipment in the Premises owned by City. The City utilizes a program of self-funding with regard to any liability it may incur for personal injury or property damage arising out its use or occupancy of the Premises.

8.2 County's Insurance Obligations. County maintains a policy of All-Risk Insurance covering the County's personal property in the Premises, including any fixtures or equipment in the Premises owned by County. The County utilizes a program of self-funding with regard to any liability it may incur for personal injury or property damage arising out its use or occupancy of the Premises.

ARTICLE 9

INDEMNITY

9.1 City's Indemnity. City shall defend and indemnify County and hold it harmless from and against any Claims related to this Lease which arise solely from any act, omission or negligence of City or City's contractors, licensees, invitees, agents or employees.

9.2 County's Indemnity. County shall defend and indemnify City and hold it harmless from and against any Claims related to this Lease which arise solely from any act, omission or negligence of County or County's contractors, licensees, invitees, agents, or employees.

9.3 Covered Claims. The obligations of City and County under this Lease to indemnify, defend and hold each other harmless shall not apply to the extent that insurance required to be carried by the indemnified party, other than any program of self-insurance, covers any Claim.

ARTICLE 10

DAMAGE OR DESTRUCTION

Should the Premises or City's or County's fixtures, improvements or personal property be damaged by fire, or other perils covered by the insurance City is required to carry under the terms of this Lease, City shall undertake to restore such merchandise, fixtures, improvements or personal property to substantially the same condition as they were in immediately preceding such damage or destruction. In the event of total destruction of the Premises so that the Premises are rendered unusable, either party shall have the right to terminate this Lease. If the parties to this Lease cannot agree upon the extent and amount of such damage or destruction, County shall promptly designate a certified architect, registered engineer, or licensed building contractor who shall determine such matters, and the determination of such architect, engineer, or contractor shall be final and binding upon the parties to this Lease.

ARTICLE 11
HAZARDOUS MATERIALS

City and County are aware of California Health & Safety Code Section 25359.7(a), which provides in part as follows:

"(a) Any owner of nonresidential real property who knows, or has reasonable cause to believe, that any release of a hazardous substance has come to be located on or beneath that real property shall, prior to the sale, lease, or rental of the real property by that owner, give written notice of that condition to the buyer, lessee, or renter of the real property. Failure of the owner to provide written notice when required by this subdivision to the buyer, lessee, or renter shall subject the owner to actual damages and any other remedies provided by law"

Pursuant to California Health & Safety Code Section 25359.7, City hereby advises County that City does not know, or have reasonable cause to believe, that any release of a hazardous substance has come to be located on or beneath the Premises. If it is established by agreement of City and County or by final order of court of competent jurisdiction that the foregoing representation and warranty of City is false, then City shall indemnify, hold harmless and defend County from and against all claims, liabilities, costs and expenses arising out of City's breach of the foregoing representations, including, but not limited to, all costs and expenses incurred by County for testing, removal, cleaning or other remedial work related to hazardous substances, and regardless of whether any portion of such claims, liabilities, costs or expenses result, in whole or in part, from the active or passive negligence of County, its agents or employees. The foregoing environmental indemnities shall survive the expiration or termination of this Lease and/or any transfer of all or any portion of the Premises, or of any interest in this Lease, and shall be governed by the laws of the State of California.

City is responsible for ensuring that provisions are in place for handling any hazardous materials under the control of the City (or their contractors) in a manner to minimize exposure incidents and that Safety Data Sheets (SDSs) will be made available to County employees for hazardous materials involved in a renovation/construction/emergency incident.

ARTICLE 12
ASSIGNMENT AND SUBLETTING

The County agrees not to sublet the whole or any part of the Premises, nor to assign this Lease, without in each case first securing the prior written consent thereto of City.

ARTICLE 13
TAXES

County shall not be obligated to pay any taxes accruing before, during or after the Term, or any extension thereof, on the Premises; all such payments shall be the sole responsibility of City.

ARTICLE 14
COMPLIANCE WITH LAWS; SAFETY REQUIREMENTS

(a) City warrants that, as of the Effective Date of this Lease, there are no violations of any laws or ordinances, or of rules or regulations of insurance-rating organizations, which would materially affect County's use or occupancy of the Premises, and that County's Intended Use of the Premises is in compliance with all existing laws and insurance policies affecting the Premises.

(b) If County's Intended Use of the Premises shall be prohibited at any time during the Term or any extensions thereof by any federal, state or local statute, ordinance or regulation, the Term shall automatically terminate as of the effective day of such prohibition and all rent owing under this Lease shall be equitably pro-rated on a per diem basis as of the date of such termination; provided, however, that County may elect to continue as the tenant on the Premises in the event that such prohibition of County's Intended Use does not also prohibit another comparable use permitted by applicable zoning laws or ordinances, subject to City's reasonable written approval thereof.

(c) City shall maintain the Premises as a "safe place of employment", as such term is used in the California Occupational Safety and Health Act, insofar as such statute may be applicable to County's Intended Use of the Premises.

(d) The required test procedures for fire extinguishing systems set forth in the Uniform Fire Code, 1988 Edition, Part VIII, Division III, Appendix IIIC, entitled "Testing Fire-Extinguishing Systems, Standpipes and Combination Systems", shall be the responsibility of City.

(e) In the event City neglects, fails or refuses to maintain the Premises as provided herein, County may, without prejudice to any other remedies provided in this Lease, exercise one of the following options:

- (1) terminate this Lease; or
- (2) cure City's default by performance of any act, including payment of money.

(f) Notwithstanding any other provision of this Lease to the contrary, City shall be responsible for upgrades to comply with the requirements of the Americans with Disabilities Act of 1990 ("ADA") (42 USCS § 12101 - 12213), Title 24 of the California Code of Regulations ("Title 24") and California Civil Code § 54.1 as they may apply to the Premises, the Building or the Property should a qualifying event trigger the need for such upgrades. A qualifying event may include a valid claim and/or lawsuit against the County regarding access issues related to

the leased premises. City's obligations hereunder shall include, without limitation, all costs of bringing the Premises, the Building and the Property into compliance, and thereafter maintaining such compliance, with the requirements of Title III of the ADA ("Title III") (42 USCS §§ 12181 - 12189) applicable during the Term to public accommodations and commercial facilities, irrespective of whether or not the particular requirements of such compliance (i) are specifically required by County's intended use of the Premises, or (ii) may also be required of County under Title II of the ADA ("Title II") (42 USCS §§ 12131 - 12165). To the extent permitted by applicable law, City shall also be responsible for payment of all costs of bringing the Premises, the Building and the Property into compliance with the requirements of Title II which may be applicable to County's intended use of the Premises but which are not also required by the requirements of Title III, and for the costs of maintaining such compliance during the Term.

ARTICLE 15

IMPROVEMENTS AND ALTERATIONS

As valuable consideration under this lease, the Lessor hereby authorizes County to make improvements to the interior of the Premises that include, but are not limited to security and work environment upgrades, adding or deleting demising walls/reconfiguring the leased space, and adding furniture. Improvement requests must be submitted to the City in writing and the County must receive written approval for the proposed improvements before proceeding with any work.

ARTICLE 16

CITY'S ACCESS TO PREMISES

City shall have access to the Premises at reasonable times on reasonable prior written notice to County's Lease Administrator (except in the case of an emergency, when notice shall be commensurate with the circumstances). City shall use all reasonable efforts in connection with such access to minimize interference with County's use and enjoyment of the Premises.

ARTICLE 17

AFFIRMATIVE ACTION PROGRAM FOR DISABLED PERSONS

City shall comply with the Affirmative Action Program for Vendors pertaining to employment of disabled persons, as set forth in Article IIIk (commencing at Section 84) of the San Diego County Administrative Code, which program is incorporated in this Lease by this reference. City is informed that the County's Affirmative Action Program for Vendors provides that its requirements shall not apply to any City, or subcontractor of a City, who has a regular, paid workforce of less than fifteen (15) employees. A copy of this Affirmative Action Program will be furnished upon request to the Lease Administrator. The County of San Diego also has a policy of encouraging the participation of disabled veterans business enterprises in its acquisition leases.

ARTICLE 18

(RESERVED)

ARTICLE 19
GENERAL PROVISIONS

19.1 Authority. City represents and warrants that it has full power and authority to execute and fully perform its obligations under this Lease pursuant to its governing instruments, without the need for any further action, and that the person(s) executing this Lease on behalf of City are the duly designated agents of City and are authorized to do so, and that fee title to the Premises vests solely in City.

19.2 Captions. The captions and headings appearing in this Lease are inserted for convenience only and in no way define, limit, construe, or describe the scope or intent of the provisions of this Lease.

19.3 County Approval. Except where stated herein to the contrary, the phrases "County's approval", and "County's written approval" or such similar phrases shall mean approval of County's Lease Administrator or said Administrator's representative as authorized by said administrator in writing. For purposes of this Lease, County's Lease Administrator shall be April F. Heinze, Director of the Department of General Services.

19.4 Cumulative Remedies. In the event of a default under this Lease, each party's remedies shall be limited to those remedies set forth in this Lease; any such remedies are cumulative and not exclusive of any other remedies under this Lease to which the non-defaulting party may be entitled.

19.5 Entire Agreement. This Lease, together with any addenda, exhibits and riders attached hereto, constitutes the entire agreement between the parties with respect to the subject matter hereof, and all prior or contemporaneous agreements, understandings and representations, oral or written, are superseded.

19.6 Governing Law. This Lease shall be governed, construed and enforced in accordance with the laws of the State of California.

19.7 Modification. The provisions of this Lease may not be modified, except by a written instrument signed by both parties.

19.8 Notices. All notices, demands, requests or other communication required or permitted to be given hereunder ("Notices") shall be in writing and (i) delivered in person to an officer or duly authorized representative of the other party, or (ii) sent by First Class United States Mail, postage prepaid to City and County at the appropriate address set forth below, or to such other address as City or County may hereafter designate by written notice to the other party. Any such Notice shall be deemed duly given upon receipt if delivered as set forth under (i), above, or, in case of (ii) above, forty-eight (48) hours from the time of mailing if mailed as provided in this section.

City's address for notice:

City Manager
City of Lemon Grove
3232 Main Street
Lemon Grove, California 91945

County's Address for notice:

Director
County of San Diego
Department of General Services MS O-360
5560 Overland Avenue, Suite 410
San Diego, California 92123

19.9 Partial Invalidity. If any provision of this Lease is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease shall not be affected thereby. Each provision shall be valid and enforceable to the fullest extent permitted by law.

19.10 Successor and Assigns. This Lease shall be binding on and inure to the benefit of the parties and their successors and assigns, except as may otherwise be provided herein.

19.11 Time of Essence. Time is of the essence of each and every provision of this Lease.

19.12 Waiver. No provision of this Lease or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed.

IN WITNESS WHEREOF, County and City have executed this Lease effective as of the date first written above.

COUNTY:

CITY:

COUNTY OF SAN DIEGO, a political
subdivision of the State of California

CITY OF LEMON GROVE, a municipal
corporation

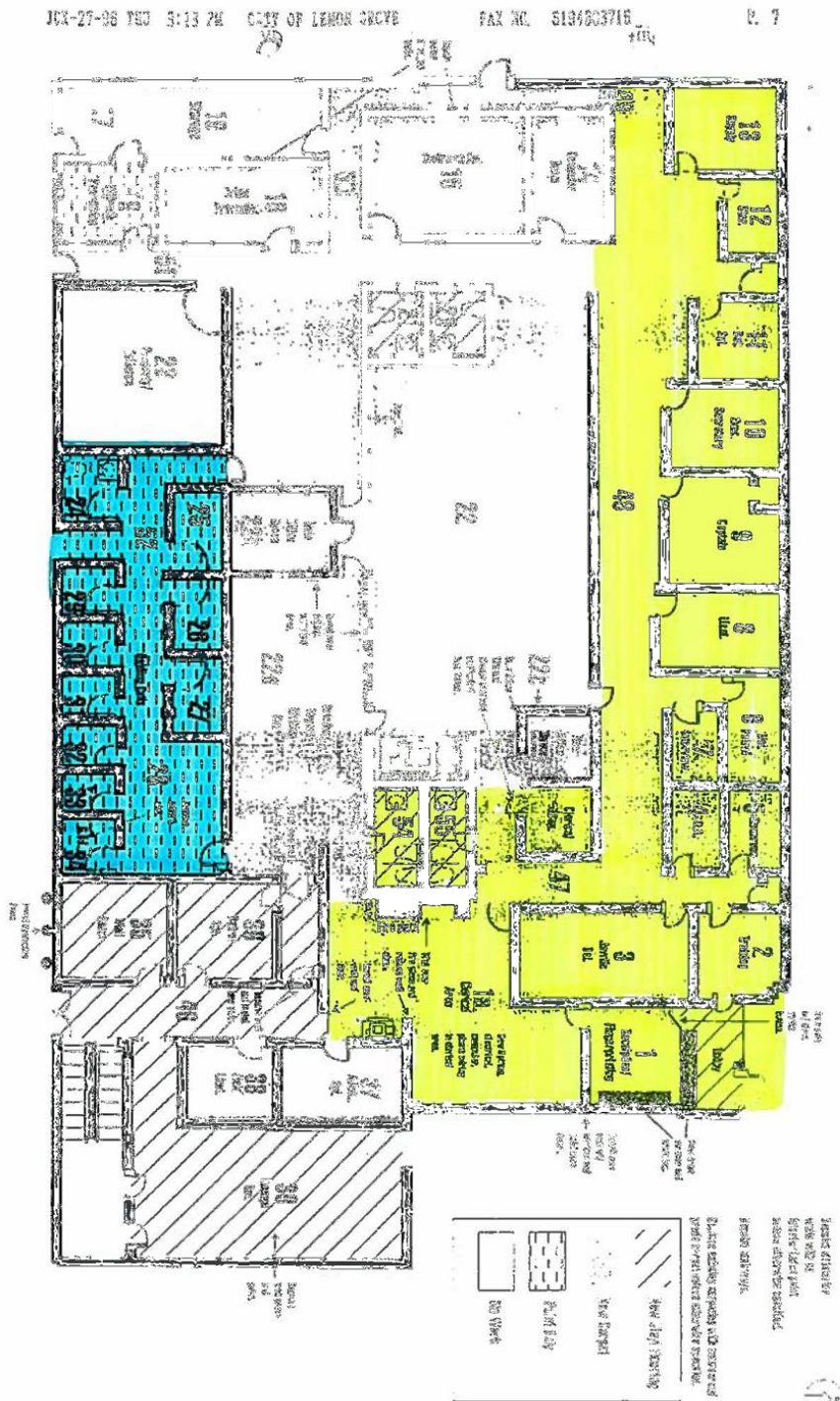
By: _____ By: _____
APRIL F. HEINZE, P.E., Director
Department of General Services

LYDIA ROMERO, City Manager

Attachment B

EXHIBIT "A" DESCRIPTION OF PREMISES

Attachment B

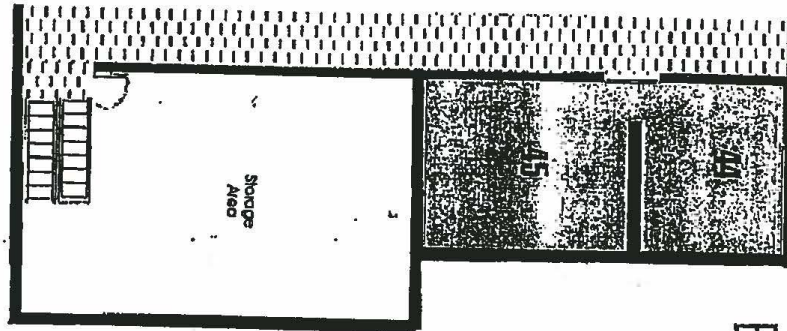


Attachment B

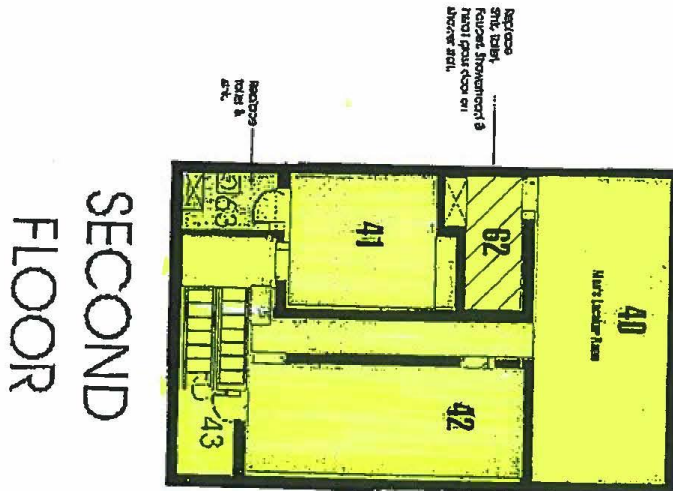
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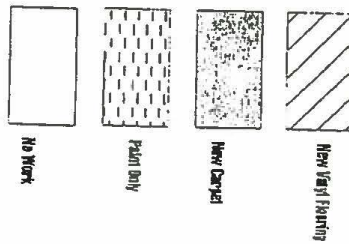
P. 8



BASEMENT



SECOND FLOOR



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Attachment B